

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Nicholas G. Trikouros

In the Matter of

SOUTHERN CALIFORNIA EDISON
COMPANY

(San Onofre Nuclear Generating Station, Units
2 and 3)

Docket Nos. 50-361-LA, 50-362-LA

ASLBP No. 12-923-01-LA-BD01

December 21, 2012

MEMORANDUM AND ORDER

(Denial of Petition to Intervene and Request for Hearing)

This case arises from an application submitted by Southern California Edison Company (SCE) to the U.S. Nuclear Regulatory Commission (NRC) seeking to amend the technical specifications contained in the licenses that govern the operation of SCE's two nuclear power reactors located near San Onofre, California.¹ These reactors are referred to as San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. On October 17, 2012, an entity known as Citizens Oversight, Inc. challenged the proposed license amendment by filing a petition to intervene and request for hearing.²

For the reasons set forth below, we deny the petition to intervene and request for hearing.

¹ Southern California Edison, San Onofre Nuclear Generating Station, Units 2 and 3; Application and Amendment to Facility Operating License Involving Proposed No Significant Hazards Consideration Determination, 77 Fed. Reg. 49,463 (Aug. 16, 2012).

² Petition to Intervene and Request for Hearing by Citizens Oversight (Oct. 17, 2012) [Petition].

I. BACKGROUND³

On July 29, 2011, SCE applied to NRC to change many of the “technical specifications” set forth in the licenses governing SONGS Units 2 and 3. 77 Fed. Reg. at 49,464. The main thrust of the license amendment request was to conform the technical specifications in the license to a set of standardized technical specifications approved by the NRC Staff in a guidance document, NUREG-1432.⁴ See id. The license amendment request covered fifteen volumes and exceeded 3000 pages.⁵ Some of the requested changes would establish “more restrictive” technical specifications and others would establish “less restrictive” technical specifications.⁶ Id. In addition, SCE asked NRC for permission to “relocate” many of these technical specifications by deleting them from the actual NRC licenses and placing them in “licensee-controlled documents.”⁷ Id. at 49,465. As set forth below, Citizens Oversight’s primary challenge is to the proposed “relocation.”

³ NRC’s “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders” are set forth in 10 C.F.R. Part 2. Some of these regulations were amended on August 3, 2012. Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012). These amendments became effective on September 4, 2012, and are applicable to the disputes raised in this adjudication. Id. All citations in this ruling are to the regulations as amended on August 3, 2012.

⁴ The full title of NUREG-1432 is “Standard Technical Specifications – Combustion Engineering Plants.”

⁵ Id.; Letter from Douglas R. Bauder, SCE, to NRC, License Amendment Requests (LAR) 260 and 246 Technical Specifications Conversion to NUREG-1432, Rev. 3.0 Plus Selected Approved Travelers (July 29, 2011).

⁶ The proposed “less restrictive” changes covered several categories including the “Deletion of Surveillance Requirement[s],” the “Deletion of [Certain] Reporting Requirements,” the “Relaxation of Surveillance Requirement Acceptance Criteria,” and the “Relaxation of Surveillance Frequency.” 77 Fed. Reg. at 49,464. Citizens Oversight did not challenge these proposed “less restrictive” changes.

⁷ In addition, SCE proposes to adopt a “Surveillance Frequency Control Program” (SFCP), which, while not actually containing the details of the surveillance frequencies, would govern them and how they may be modified. The SFCP would be incorporated into the license technical specifications. See License Amendment Request, enclosure 3, at 2; see also TSTF-425-A, Rev. 3 “Relocate Surveillance Frequencies to Licensee Control – RITSTF Initiative 5b”;

On August 16, 2012, the NRC published a notice of opportunity to request a hearing regarding the proposed amendments to the SONGS licenses in the Federal Register. Id. at 49,463.⁸ The deadline to file a request for hearing was October 15, 2012. Id. at 49,463.

On October 17, 2012, Citizens Oversight, represented pro se by Mr. Raymond Lutz, filed its petition to intervene and request for a hearing. Petition at 1, 17. The petition contains three contentions. Id. at 5–16. Among other things, it asserts that “removing surveillance frequencies from the operating license document obfuscates the minimum requirements, may introduce human error, and limits review by the public.” Id. at 5.

On November 9, 2012, the NRC Staff filed an answer, asserting that the petition was unjustifiably untimely, that Citizens Oversight had failed to establish that it had standing, and that Citizens Oversight had failed to show that any of the contentions were admissible under 10 C.F.R. § 2.309(f)(1).⁹ On November 13, 2012, SCE filed its answer asserting the same three arguments.¹⁰ On November 20, 2012, Citizens Oversight filed its reply.¹¹

Meanwhile, on October 25, 2012, this Board was established to preside over this adjudication,¹² and, on December 5, 2012, we heard oral argument from the parties on the issues raised in the pleadings. The oral argument was conducted in the Board’s hearing room

NEI-04-10, Rev. 1 “Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies.

⁸ This also served as notice that the NRC Staff proposed a “no significant hazards consideration determination” with regard to SCE’s proposed amendments. 77 Fed. Reg. at 49,471.

⁹ NRC Staff’s Answer to Petition to Intervene and Request for a Hearing by Citizens Oversight (Nov. 9, 2012) [Staff Answer].

¹⁰ Southern California Edison Company’s Answer Opposing Petition to Intervene and Request for Hearing by Citizens Oversight (Nov. 13, 2012) [SCE Answer].

¹¹ Citizens Oversight’s Answer to Submissions by NRC Staff and Southern California Edison Opposing the Petition to Intervene and Request for a Hearing by Citizens Oversight. (Nov. 16, 2012) [Reply].

¹² Southern California Edison Company; Establishment of Atomic Safety and Licensing Board, 77 Fed. Reg. 65,909 (Oct. 31, 2012).

in Rockville, Maryland, and was webcast to the public. Order (Setting Oral Argument) (Nov. 20, 2012) (unpublished). Counsel for SCE and the NRC Staff participated in person. Tr. at 3. Mr. Lutz participated by video conference from San Diego, California. Id.

NRC regulations state that, in order for a request for hearing and petition to intervene to be granted, a petitioner must (1) establish that it has standing and (2) propose at least one “admissible” contention. 10 C.F.R. § 2.309(a). In addition, the petitioner must either file its petition by the date specified in the Federal Register notice or show “good cause” for filing after the deadline. 10 C.F.R. § 2.309(b)–(c).¹³ All three—timeliness, standing, and contention admissibility—must be met.

As set forth below, we conclude that Citizens Oversight has failed to proffer a contention that is admissible under the criteria of 10 C.F.R. § 2.309(f)(1)(i)–(vi); therefore, its petition must be denied. In these circumstances, we need not decide the other two issues—timeliness and standing.

II. LEGAL STANDARDS GOVERNING CONTENTION ADMISSIBILITY¹⁴

To be admissible, a contention must satisfy six basic requirements set forth in 10 C.F.R. § 2.309(f)(1)(i)–(vi). These can be summarized as follows:

- (i) Specificity: “Provide a specific statement of the issue of law or fact to be raised or controverted”;
- (ii) Brief Explanation: “Provide a brief explanation of the basis for the contention”;
- (iii) Within Scope: “Demonstrate that the issue raised in the contention is within the scope of the proceeding”;

¹³ A petitioner can justify filing a petition after the initial deadline has expired in one of two ways. First, the petitioner can show that the contention is based on new information (i.e., material information that was not previously available) and that the petition was filed promptly after the new information became available. See 10 C.F.R. § 2.309(c)(1)(i)–(iii); 77 Fed. Reg. at 46,591. Alternatively, the petitioner can justify missing the filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues. See 10 C.F.R. §§ 2.309(c)(2), 2.307; 77 Fed. Reg. at 46,571, 46,591.

¹⁴ The August 3, 2012, amendments to the Part 2 regulations did not change the six basic requirements of 10 C.F.R. § 2.309(f)(1)(i)–(vi).

- (iv) Materiality: “Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding”;
- (v) Concise Statement of Alleged Facts or Expert Opinion: “Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue”; and
- (vi) Genuine Dispute: “[P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief.”

10 C.F.R. § 2.309(f)(1)(i)–(vi). Failure to comply with any of these requirements is grounds for not admitting a contention.¹⁵

The purpose of 10 C.F.R. § 2.309(f)(1) is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.” Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004). The Commission has stated that “the hearing process . . . [is only intended for] issue[s] that [are] appropriate for, and susceptible to, resolution in an NRC hearing.” Id. “While a board may view a petitioner’s supporting information in a light favorable to the petitioner . . . the petitioner (not the board) [is required] to supply all of the required elements for a valid intervention petition.”¹⁶ The rules on contention admissibility are “strict by design.”¹⁷

¹⁵ Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004).

¹⁶ Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

¹⁷ Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003); Dominion Nuclear Connecticut, Inc. (Millstone

III. ANALYSIS AND RULING ON CONTENTION 1

A. Statement of Contention 1

Contention 1 reads as follows:

Petitioner contends that removing surveillance frequencies from the operating license document obfuscates the minimum requirements, may introduce human error, and limits review by the public.

Petition at 5.

B. Arguments Regarding Contention 1

The current licenses governing SONGS Units 2 and 3 specify that SCE must conduct tests, calibrations, or inspections to assure the necessary quality of systems and components is maintained and that facility operation will be within safety limits. In particular, provisions in the current licenses specify how frequently SCE must conduct these inspections. These are referred to as “surveillance frequency” technical specifications. SCE is requesting that hundreds of these surveillance frequency technical specification provisions be deleted from the licenses and inserted into separate documents. Tr. at 24, 49; 77 Fed. Reg. at 49,465.

Citizens Oversight objects to relocating the surveillance frequency technical specifications from the NRC issued license to the SCE-controlled documents. Petition at 5–6. It asserts that “moving surveillance frequency specifications completely out of the Technical Specification document makes it difficult for the public and other organizations to review the surveillance frequencies in use and to provide useful feedback to correct assumptions made by operators.” Id. at 6. Citizens Oversight argues that if the surveillance frequency provisions are moved into SCE-controlled documents, then SCE will have “free rein” to amend these provisions. Id. at 7. Citizens Oversight believes that SCE “will opt to decrease the surveillance frequencies . . . to reduce cost while ignoring the fact that many surveillances will be omitted or incorrectly performed by leaving out necessary steps.” Id. at 6. Citizens Oversight states that “it

Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001); see Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334–35 (1999).

is very difficult to conceive of all failure scenarios” and that there is a “likelihood that risk scenarios will underestimate the risk, and therefore allow surveillances to be improperly reduced in frequency.” Id. at 7. Citizens Oversight asserts that “moving the surveillance frequencies to a secondary document obfuscates the requirements for the licensee, and increases the complexity of the surveillance program.” Id. This, it says, decreases the safety of the program and “makes it more difficult for the surveillance frequencies to be understood by the public and outside technical experts who are attempting to perform needed review of operational safety.” Id.

The central thrust of Contention 1 is the following:

The petitioner asserts that allowing the licensee free-rein to reduce the surveillance frequencies so as to reduce cost will not improve safety at the plant, and therefore, objects to the relocation of these to a licensee-controlled document. These specifications must be provided in the main license document so as to provide a single place where all information about the license can be obtained.

Petition at 7–8.

Citizens Oversight adds that “surveillance frequencies of critical operational parameters . . . are far too low (infrequent) to allow operators to—through those surveillances—catch an ongoing failure of the plant.” Id. at 8. As an example, Citizens Oversight says that “checking leakage from the steam generators only once every 72 hours is ridiculously infrequent,” citing to the “steam generator failure on January 31, 2012, when the leak expanded 40% . . . within an hour.” Id. Citizens Oversight states that it is concerned about “the safety implications implied by ignoring these critical parameters for the time intervals specified.” Id. at 9.

SCE and the NRC Staff oppose the admission of Contention 1. First, SCE and the NRC Staff state that the nuclear industry thinks that standardizing the technical specifications for nuclear reactors of a similar design, including relocating surveillance frequency technical

specifications from the license to licensee-controlled documents, is an excellent idea.¹⁸ SCE Answer at 19; Staff Answer at 2.

Second, SCE and the NRC Staff assert that the Commission agrees with the principle of standardization, including standardizing the relocation of surveillance frequencies from the license to the licensee-controlled documents. SCE Answer at 19–21; Staff Answer at 2. In this regard, they point to the NRC’s “Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,” 58 Fed. Reg. 39,132 (July 22, 1993), and to NRC’s 1992 guidance document—NUREG-1432 “Standard Technical Specifications, Combustion Engineering Plants.” SCE Answer at 3, 21; Staff Answer at 2. And, most specifically, SCE and the NRC Staff point to NEI-04-10 and to the NRC’s “Notice of Availability of Technical Specification Improvement to Relocate Surveillance Frequencies to Licensee Control—Risk-Informed Technical Specification Task Force (RITSTF) Initiative 5b, Technical Specification Task Force—425, Revision 3,” 74 Fed. Reg. 31,996 (July 6, 2009). SCE Answer at 19 & n.87, 24; Staff Answer at 15 n.78, 19.

Third, SCE points out that many other reactor licensees have, with NRC Staff approval, relocated some of their surveillance frequency technical specifications from the license to the licensee-controlled documents. SCE Answer at 21–22.

Fourth, turning specifically to the contention admissibility criteria, both SCE and the NRC Staff argue that Contention 1 does not raise a material issue, as required by 10 C.F.R. § 2.309(f)(1)(iv). SCE Answer at 2, 20–22; Staff Answer at 17. The NRC Staff says that Citizens Oversight fails to cite any legal requirement that mandates that the surveillance

¹⁸ According to SCE, nuclear industry groups that promote such standardization include (1) the “Technical Specification Task Force” (TSTF), (2) the “Risk Informed Technical Specification Task Force” (RITSTF), and (3) the Nuclear Energy Institute (NEI). SCE Answer at 19. Each has apparently issued reports endorsing the relocation of surveillance frequencies to licensee-controlled documents. See TSTF-425-A, Rev. 3 “Relocate Surveillance Frequencies to Licensee Control – RITSTF Initiative 5b”; NEI-04-10, Rev. 1 “Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies”; see also SCE Answer at 19.

frequency provisions must stay in the license so that the public will have the opportunity to oversee any changes to them. Staff Answer at 17. The Staff rejects Citizens Oversight’s “claim that SCE will have ‘free rein to reduce the surveillance frequencies’” on the ground that 10 C.F.R. § 50.59 would apply to any such changes and would prevent SCE from making “any change that results in a substantial change from previous analyses or results in a ‘more than minimal’ increase in risk.” Id. at 20. The Staff says that we cannot assume that SCE will violate 10 C.F.R. § 50.59.¹⁹ Id. at 21.

SCE’s argument that Contention 1 fails the materiality criterion of 10 C.F.R. § 2.309(f)(1)(iv) relies on Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001) (Millstone). SCE Answer at 21. SCE asserts that, “[i]n Millstone, the Commission upheld rejection of a contention challenging the removal of details from the licensee’s Technical Specifications to a licensee-controlled document.” Id. SCE says that Citizens Oversight likewise has “provided no safety or legal reason for rejecting” the requested transfer of the surveillance frequencies from the license to a licensee-controlled document and therefore Contention 1 must fail. Id. at 22.

With regard to the final component of Contention 1—Citizens Oversight’s assertion that “checking leakage from the steam generators only once every 72 hours is ridiculously infrequent,” Petition at 8—SCE and the NRC Staff argue that this challenge is not within the scope of the license amendment proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii). SCE Answer at 25; Staff Answer at 22. They assert that the 72-hour surveillance frequency for steam generator leakage is in the current license and it will remain unchanged in the amended license. SCE Answer at 23; Staff Answer at 22–23. Therefore, SCE and the NRC Staff

¹⁹ In contrast, during oral argument, SCE and the NRC Staff asserted that 10 C.F.R. § 50.59 does not apply to subsequent changes SCE might make to the surveillance frequencies in the licensee-controlled documents. Tr. at 52–61. Instead, SCE argued that NEI-04-10, not 10 C.F.R. § 50.59, would apply if SCE subsequently sought to change the surveillance frequencies set forth in the SFCP document. Tr. at 52–56. The NRC Staff agreed. Id. at 60–61. SCE argued that NEI-04-10 provides more stringent requirements for changing a surveillance frequency. Id. at 52–54.

conclude that this part of Contention 1 is inadmissible as not within the scope of the proposed license amendment.²⁰

In its reply brief, Citizens Oversight states that “the key issue [raised by Contention 1] is that these [frequency] specifications will no longer be subject to review according to the license amendment process.” Reply at 11. Citizens Oversight states:

The way the technical specifications are currently written, changing a surveillance frequency will require a license amendment. If these surveillance frequencies are relocated to the licensee-controlled document, they can be changed without an LAR, without notice in the Federal Register and without any opportunity for the public to make comments, intervene, or request a hearing.

Id. at 12.

C. Analysis and Ruling on Admissibility of Contention 1

We conclude that the Commission’s Millstone decision compels the rejection of Contention 1 on the ground that it fails to raise a material issue and is therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iv). The “key issue” raised by Contention 1 is that “relocating”²¹

²⁰ SCE and the NRC Staff raise a number of other arguments against the admission of Contention 1. These do not need to be enumerated here.

²¹ It is somewhat misleading to say that the technical specifications have been “relocated.” “Technical Specifications” are those technical requirements that are incorporated in an NRC license. See 10 C.F.R. §§ 50.36, 50.59(c)(1)(i). If the technical requirement is deleted from the license and placed in a licensee-controlled document, then it is no longer a “technical specification.” See Tr. at 47 (SCE), 87 (NRC Staff). Instead, it becomes a “written commitment” by the licensee. See id. at 49. Thus, rather than merely being “relocated,” the technical specification is being eliminated and replaced by a qualitatively different provision, a “written commitment.” Compliance with a technical specification is required and directly enforceable by the Commission, whereas compliance with written commitments contained in licensee-controlled documents is not. See Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, 58 Fed. Reg. at 39,138 (“Compliance with Technical Specifications is required by the Commission, and adherence to commitments contained in licensee-controlled documents is expected.” (emphasis added)). We note however that an NRC Enforcement Manual specifies that a failure to fulfill a written commitment can be the basis for a Notice of Deviation. See NRC Enforcement Manual Rev. 7 (Oct. 1, 2007) at 3-26. Also, SCE postured that a change to the frequency that did not use the NEI-04-10 process would be a violation of Criterion V, Appendix B, of 10 C.F.R. Part 50. See Tr. at 61–63. Criterion V, Appendix B states, in part, “Activities affecting quality shall be prescribed by documented instructions [or] procedures . . . and shall be accomplished in accordance with these instructions [or] procedures.”

the surveillance frequency requirements from the license to a licensee-controlled document is improper because it will deprive the public of any opportunity to scrutinize or challenge further changes to the surveillance frequencies. It is clear to us that Citizens Oversight is correct on one point—If SCE’s license amendment request is granted, then SCE will be able to make future changes to the surveillance frequencies with no opportunity for public scrutiny and oversight. See Tr. at 49–50 (SCE), 89 (NRC Staff). Indeed SCE and the NRC Staff state that SCE will not even need to inform the NRC Staff of such changes.²² See Tr. at 74–75 (SCE), 90 (NRC Staff). But it is equally clear to us that Millstone held that such a “relocation” is legal and unobjectionable.

Millstone provides a useful overview of the evolution of NRC’s policy for determining which provisions need to be included in a license, and which need not. Under Section 182 of the Atomic Energy Act, 42 U.S.C. § 2232, every license to operate a nuclear power reactor “must contain a list of technical specifications necessary for adequate protection of public health and safety.” Millstone, CLI-01-24, 54 NRC at 351. “Technical specifications must include information on the amount, kind, and source of special nuclear material; the place of use; and the particular characteristics of the facility.” Id. (citing 42 U.S.C. § 2232). However, the AEA “leaves it up to the Commission to determine, and to prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety.” Id. NRC’s original rule governing technical specifications, 10 C.F.R. § 50.36, was promulgated in 1968 and lacked well-defined criteria as to what requirements need to be in the license (i.e., need to be a “technical specification”) and what provisions need not be in the license. Id. at 351–52. As a result, the number of items included in the technical specifications “mushroomed.” Id. at 352. In 1993, NRC issued a Final Policy Statement on Technical

²² The Board finds it odd that a procedure that accomplishes much the same as the process in 10 C.F.R. § 50.59 does not have a formal reporting requirement. We suggest that the Staff consider adding a biannual requirement to report changes to the frequency of inspections and tests similar to the reporting requirement of changes done under 10 C.F.R. § 50.59.

Specifications pushing the standardization of technical specifications and their reduction in number. 58 Fed. Reg. 39,132. In 1995, the NRC revised 10 C.F.R. § 50.36 and established clearer criteria as to what constitutes a technical specification that must be in the license. See Technical Specifications, 60 Fed. Reg. 36,953, 36,954 (July 19, 1995).

As part of its technical specifications initiative, the NRC revised section 50.36, which now identifies criteria to be used in determining what items must be included in technical specifications. If a procedural or other requirement meets any one of the criteria, it must be retained in the technical specifications. Technical specifications that do not meet any of the criteria may be transferred to licensee-controlled documents. . . . Thus, the agency policy is to prune technical specifications of voluminous details that are relatively less significant, and thereby focus licensee and plant operator attention on the most significant technical concerns.

Millstone, CLI-01-24, 54 NRC at 352 (citations and internal quotation marks omitted).

It was in this context that the petitioners in the Millstone case filed their sole contention, challenging a proposed license amendment that would “eliminate from the technical specifications numerous detailed procedures for monitoring routine radioactive releases” and transfer them to a licensee-controlled document. Id. at 353. As a consequence of the proposed transfer, the licensee would be able to make future changes to the radiation monitoring procedures without going through another license amendment. Id. at 355. The Commission noted that the Millstone petitioners “rely . . . on their loss of future opportunities to challenge—by adjudicatory intervention—licensee-initiated changes in the low-level effluent monitoring details.” Id. at 359. “The Petitioners suggest that without full public participation, effluent monitoring ‘may become unduly lax’ and ‘fail [] to pick up [a] release.’” Id.

The Commission affirmed the board’s rejection of the contention in the Millstone case. “[T]he allegations surely fall short of an admissible contention, for they fail to offer any specific explanation, factual or legal, for why the consequences they fear will occur if these particular technical specifications are transferred to the [licensee-controlled document].” Id. at 359. The Commission acknowledged that “almost every item originally contained in technical specifications has some conceivable connection to safety,” but reasoned that “this general

premise is insufficient, by itself, as a ground for intervention.” Id. at 360. The Commission noted that the “Petitioners’ theory essentially means that no item could ever be transferred from the technical specifications because one could always argue that there is a potential, however remote, of a greater possibility of injury if the item in the future can be changed without a full license amendment.” Id. The Commission stated, in words apropos here:

This license amendment proceeding offers the Petitioners the opportunity to come forward and state why the nature of these effluent procedures at issue here is such that they should not be removed from the technical specifications. The Petitioners have not done so. Nowhere, for instance . . . do the Petitioners even refer to the section 50.36 criteria that govern which technical specifications must be retained and which can be relocated to licensee-controlled documents. The license application, in some detail, applies these criteria to the proposed changes to conclude that the procedural details relocated by these license amendments can be taken out of the technical specifications. The Petitioners do not even attempt to rebut the licensee’s analyses. Our contention-pleading rule, however, calls on intervention petitioners to ‘include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute.

Id. at 361.

The Millstone decision is directly on point here and compels the rejection of Contention 1. Millstone holds that “relocation,” and the loss of future oversight and hearing opportunities that goes with it, does not give rise to an admissible contention. Instead, the petitioner must “explain, with specificity, particular safety or legal reasons” why moving a requirement from the license into a licensee-controlled document would be improper, i.e., why it is material. Id. at 359–60. This Citizens Oversight has not done. Citizens Oversight has not provided the minimal factual or legal basis to suggest either (a) that the surveillance frequencies in question are of such safety significance that they must remain in the license as “technical specifications,” or (b) that, because of some particular aspect of the other conditions in the SCE license or some alleged deficiencies in the SCE surveillance program, these surveillance frequencies must be retained in the SCE license. See id. at 360.

On this basis, we hold that Contention 1, with the exception of the 72-hour provision discussed immediately below, is inadmissible because it fails to raise a material issue as required by 10 C.F.R. § 2.309(f)(1)(iv).²³

We turn now to the one portion of Contention 1 that challenges a specific aspect of the SCE license—the assertion that “checking leakage from the steam generators only once every 72 hours is ridiculously infrequent.” Petition at 8. Citizens Oversight is concerned about “the safety implications implied by ignoring these critical parameters for the time intervals specified.” Id. at 9.

Although the 72-hour portion of Contention 1 provides some needed specificity, it fails because SCE’s license amendment request does not ask for a change to the current 72-hour provision. 10 C.F.R. § 2.309(f)(1)(iii) specifies that, in order to be admissible, a contention must raise issues that are “within the scope” of the proceeding. The hearing notice specifies that SCE is requesting certain changes to its technical specifications and states, “Contentions shall be limited to matters within the scope of the amendment under consideration.” 77 Fed. Reg. at 49,471. The Commission has stated that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them.”²⁴ The 72-hour portion of Contention 1 challenges a provision that is in the current license, that is not being changed, and that is not part of the requested license amendment.

²³ Given this conclusion, we do not need to decide whether Contention 1 satisfies the other criteria of 10 C.F.R. § 2.309(f)(1)(i)–(vi). But we do reject the suggestions by SCE and the NRC Staff that the “relocation” of these surveillance frequency requirements is necessarily legal because (a) the nuclear industry endorses this practice, (b) NRC policy endorses it, or (c) everybody else is doing it. Nor do we endorse their argument that henceforth 10 C.F.R. § 50.59 does not apply to subsequent changes SCE might want to make to the surveillance frequencies in the licensee-controlled documents. The degree to which section 50.59 applies would, it seems to us, be controlled not by how the modification is labeled (i.e., as a change to a licensee-controlled document) but by whether the substance of the change brings that revision within the confines of section 50.59.

²⁴ Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981).

Therefore, this part of Contention 1 is not within the scope of this proceeding and is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).

IV. ANALYSIS AND RULING ON CONTENTION 2

A. Statement of Contention 2

Contention 2 asserts that “there are a number of mistakes and other problems” in the license amendment request, Petition at 9, and goes on to articulate five specific concerns or issues that we will denominate as Contentions 2A through 2E. These can be summarized as follows:

Contention 2A: Citizens Oversight objects to “the proposed change . . . to reduce [the steam generator] level from 25% to 20%.” Id. Citizens Oversight says that this “loosening of the licensee requirement . . . puts the plant in severe danger.” Id.

Contention 2B: Citizens Oversight complains that “[t]he operational license has a severe internal inconsistency” because at one point it says that “there can be no pressure boundary leakage at all, due to material degradation” whereas at another spot the license “allows significant leakage to occur, up to 150 gallons per day through any one [steam generator].” Id. at 10–11 (emphasis omitted). Citizens Oversight then suggests some revised language to cure this ostensible inconsistency. Id. at 13.

Contention 2C: Citizens Oversight “objects to [sic] change to the license which incorrectly allows a single Atmospheric Dump Valve.” Id. Citizens Oversight “contends this change is unsafe.” Id. at 14.

Contention 2D: Citizens Oversight “contends the exclusion area specified in the technical specifications is insufficiently protected.” Id. It notes that Interstate Highway 5 penetrates the exclusion area and asserts that SCE has failed to provide “appropriate and effective arrangements . . . to control traffic on the highway” as required by 10 C.F.R. § 50.2. Id. at 14–15. In the same vein, Citizens Oversight complains that SCE must take appropriate

measures to limit public access to the exclusion area on the “beach next to the seawall.” Id. at 15.

Contention 2E: Citizens Oversight asserts that the two-sentence paragraph found in Attachment 1, Volume 7, Chapter 3.4 of the license amendment request that deals with tube repair and plugging “doesn’t make much sense.” Id. at 16. The entire text and discussion of Contention 2E reads as follows:

Attachment 1 Vol 7 (Chapter 3.4 Reactor Coolant System (RCS)) (ADAMS ML11251A100), Page 510 – This paragraph doesn’t make much sense. This is probably an artifact of the change of eliminating the option to repair steam generator tubes, which is not an option for this plant. Why would any tube that satisfies the repair criteria not be plugged. Plus “Repair Criteria” should be “Plug Criteria,” and if a tube satisfies the repair criteria but is not plugged, [sic] probably does not have tube integrity.

During an SG inspection, any inspected tube that satisfies the Steam Generator Program repair criteria is removed from service by plugging. If a tube was determined to satisfy the repair criteria but was not plugged, the tube may still have tube integrity.

Petitioner suggests that the second sentence of this paragraph be deleted.

Id. at 16.

B. Arguments Regarding Contention 2

SCE and the NRC Staff oppose the admission of Contentions 2A through 2D on the ground that they are outside of the scope of the license amendment request because the provisions about which Citizens Oversight complains are part of SCE’s current technical specifications and would not be changed in the proposed license amendment.²⁵ SCE Answer at 28–39; Staff Answer at 23–32.

With regard to Contention 2A, the Staff states, “The current technical specifications already list the steam generator level reactor trip as 20% and the LAR does not change this requirement.” Staff Answer at 23. SCE agrees, stating that it “has not changed the steam

²⁵ SCE and the NRC Staff assert several other grounds on which Contentions 2A through 2D are not admissible. We need not review them here.

generator level from 25% to 20%; the value of 20% is part of the current licensing basis.” SCE Answer at 29.

Likewise, with regard to Contention 2B, the Staff and SCE both agree that there is nothing in the license amendment request that changes the pressure boundary leakage clause about which Citizens Oversight complains. SCE Answer at 30–31; Staff Answer at 25. “The requirements challenged by [Citizens Oversight] already exist in the SONGS [current technical specifications], and SCE is not proposing to modify them in any manner.” SCE Answer at 30–31. SCE and the NRC Staff also argue that the two pressure boundary leakage provisions cited by Citizens Oversight (one prohibiting pressure boundary leakage excluding leakage through the steam generator and the other dealing with primary to secondary leakage through the steam generators) are not inconsistent. Id. at 31–33; Staff Answer at 26.

SCE and the NRC Staff make the same points with regard to Contentions 2C and 2D. They assert that these contentions are outside of the scope of this proceeding because the provisions complained of by Citizens Oversight are not being changed. They state that the license amendment request does not ask to change the current Atmospheric Dump Valve license provision. SCE Answer at 35; Staff Answer at 27. Likewise the proposed license amendment seeks no change in the current license provisions related to the exclusion area. SCE Answer at 36; Staff Answer at 29.

With regard to Contention 2E, SCE and the NRC Staff raise several other arguments.²⁶ SCE asserts that Citizens Oversight misunderstands the tube repair/plugging provision, which is the subject of Contention 2E, and says that the contention is not admissible because Citizens Oversight has failed to demonstrate a genuine dispute with regard to this provision, contrary to 10 C.F.R. § 2.309(f)(1)(vi). SCE Answer at 38. SCE also says Contention 2E is not admissible because Citizens Oversight has failed to provide “alleged facts or expert opinions which support

²⁶ Neither SCE nor the NRC Staff assert that the tube repair/plugging provision complained of in Contention 2E is part of the current licensing basis of SONGS Units 2 or 3.

the requestor's/petitioner's position on the issue" contrary to 10 C.F.R. § 2.309(f)(1)(v). Id. at 38–39. The NRC Staff asserts that Citizens Oversight has misread the two sentences in question because it has failed to understand the definition of "SG performance criteria . . . elaborate[s] and explain[s] the sentence which Petitioner found confusing." Staff Answer at 32.

C. Analysis and Ruling on Admissibility of Contention 2

For the reasons stated in section IV.B, the Board concludes that Contentions 2A through 2D are not admissible because they attack provisions of SCE's current license, provisions that are not the subject of SCE's license amendment request.²⁷ Thus, these contentions are outside the scope of this proceeding. While Citizens Oversight may consider filing a petition pursuant to 10 C.F.R. § 2.206 requesting that the NRC Executive Director for Operations change these provisions, Contentions 2A through 2D are not admissible here.

Contention 2E consists mainly of several conclusory editorial comments and a suggested sentence deletion. It states the "paragraph doesn't make much sense," supposes that this is due to some artifact in the change process, asks a hypothetical question, and then suggests that the second sentence in the two sentence quoted paragraph be deleted. Petition at 16. We do not understand Citizens Oversight's point, and we have difficulty conceiving what would be litigated if Contention 2E were admitted and we were to hold an evidentiary hearing on it. But, basically, we find that Citizens Oversight has not provided us with sufficient information to assess whether there is a genuine dispute here. See 10 C.F.R. § 2.309(f)(1)(vi). In addition,

²⁷ The fundamental point is that SCE is not asking to change the license provisions challenged in Contentions 2A through 2D. The source of Citizens Oversight's confusion seems to be as follows: The current license specifies, for example, that steam generator reactor trip level is 20%. Meanwhile, SCE is proposing to standardize its technical specifications to conform, generally, with a generic/standardized document referred to as the "Improved Standard Technical Specifications" (ISTS) based on NUREG-1432. But the ISTS states that the steam generator reactor trip level is 25%. In order to keep the level at the 20% contained in the current license, SCE is asking to adopt the ISTS, except that the ISTS value of 25% should be changed to be 20%. In short, it is NOT asking for a change to the current technical specification; it is asking for a change to the generic/standardized technical specification document that will keep technical specifications at the same level specified in the current SCE licenses. See Tr. at 103–06.

Contention 2E is not admissible because, among other things, it fails to provide “alleged facts or expert opinion which support” Citizens Oversight’s position, as required by 10 C.F.R.

§ 2.309(f)(1)(v).

V. ANALYSIS AND RULING ON CONTENTION 3

A. Statement of Contention 3

The following is the entire statement and discussion of Contention 3 as found in Citizens Oversight’s petition:

Petitioner contends that the licensee may attempt to claim that the current LAR also applies to the recent request by licensee to operate SONGS Unit 2 at reduced power output (70%) to avoid fluid-elastic instability and excessive steam velocity that resulted from design changes to the steam generators during the steam generator replacement project. The matter of operating Unit 2 or Unit 3 after the emergency shutdown on January 31, 2012, and after the discovery of severe steam generator tube wear is distinct from the changes proposed in the current LAR and the scope of the LAR must not be allowed to encompass those very important concerns. Petitioner furthermore contends that a new LAR must be processed to allow the plant to operate in a reduced-power configuration so that the NRC and the public can review their proposal in detail.

Petition at 16.

B. Arguments Regarding Contention 3

SCE objects to Contention 3 on almost every conceivable ground. It says that this contention is “outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii); not material, contrary to 10 C.F.R. § 2.309(f)(1)(iv); not adequately supported, contrary to 10 C.F.R. § 2.309(f)(1)(v); and does not raise a genuine dispute, contrary to 10 C.F.R. § 2.309(f)(1)(vi).” SCE Answer at 39. If true, any one of these defects would be fatal.

The NRC Staff agrees, asserting that Contention 3 fails to raise issues that are within the scope of this license amendment proceeding, that Contention 3 is not material to the proceeding, and that Citizens Oversight has failed to provide sufficient information to support the contention, in violation of 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v), and (vi), respectively. Staff Answer at 33. The Staff adds that,

Although the proposed restart of SONGS Unit 2 is not an appropriate inquiry for this proceeding, [Citizens Oversight] is not without remedy. If SCE ultimately submits a license amendment to support restart, [Citizens Oversight] will have an opportunity to file a petition to intervene on the amendment at that time.

Id. at 33–34 (citing 42 U.S.C. § 2239(a)).

In its reply, Citizens Oversight acknowledges that Contention 3 “does not raise issues within the LAR request,” but asserts that it “does raise issues regarding the LAR as a whole. It is a contention about how the LAR is processed with respect to the potential need for a subsequent LAR to allow operation of the plant at a ‘partial power level,’ which is a MODE that is not defined in the license.” Reply at 23.

C. Analysis and Ruling on Admissibility of Contention 3

The Board concludes that Contention 3, contrary 10 C.F.R. § 2.309(f)(1)(iii), fails to raise issues that are within the scope of SCE’s current license amendment request and therefore is not admissible. The current license amendment request, filed on July 29, 2011, focuses on various changes to the technical specifications governing the operation of SONGS Units 2 and 3. In contrast, Contention 3 focuses on the “matter of operating Unit 2 or Unit 3 after the emergency shutdown on January 31, 2012,” which Citizens Oversight says is “distinct from the changes proposed in the current LAR.” Petition at 16. Contention 3 states that “a new LAR must be processed to allow the plant to operate in a reduced-power configuration so that the NRC and the public can review their proposal in detail.” Id.

It is not the province of this Board to determine whether the confirmatory action letter that the NRC Staff issued to SCE in March 2012 is a de facto license amendment²⁸ or whether the restart of SONGS Unit 2 or Unit 3 requires a license amendment.²⁹ Nor do we put much stock in the Staff's re-assurance that "[i]f SCE ultimately submits a license amendment to support restart [then Citizens Oversight] will have an opportunity to file a petition to intervene on the amendment at that time." Staff Answer at 33. There is no reason to think that SCE plans to submit a license amendment request.

What we do know is that Contention 3 is not within the scope of SCE's license amendment request and is therefore not admissible.

VI. CONCLUSION AND ORDER

For the foregoing reasons, the request for hearing and petition to intervene filed by Citizens Oversight is denied.³⁰

²⁸ This appears to be an issue confronting an Atomic Safety and Licensing Board that was recently established pursuant to CLI-12-20, 76 NRC __ (Nov. 8, 2012). See Southern California Edison Company; Establishment of Atomic Safety and Licensing Board, 77 Fed. Reg. 70,487 (Nov. 26, 2012) (SONGS II).

²⁹ In the SONGS II adjudication, the NRC Staff has stated that it is "separately reviewing whether the licensee's Restart Plan, if adopted, would result in a proceeding for the granting, suspending, revoking, or amending of any license." See NRC Staff's Answer to Petitioner's Motion to Amend the Proposed Scheduling Order and Clarify Scope of Disclosure, Southern California Edison Co. (San Onofre Nuclear Generating Station Units 2 and 3), Nos. 50-361-CAL/50-362-CAL (Dec. 14, 2012) at 7.

³⁰ On December 2, 2012, Citizens Oversight filed an addendum to its reply. Addendum to Citizens Oversight's Answer to Submissions by NRC Staff and Southern California Edison Opposing the Petition to Intervene and Request for a Hearing by Citizens Oversight (Dec. 2, 2012). On December 4, 2012, SCE filed a motion to strike the addendum. Southern California Edison Company's Motion to Strike Citizens Oversight's Addendum to Its Reply (Dec. 4, 2012). In light of the Board's ruling today, SCE's motion is moot.

This order is subject to appeal to the Commission in accordance with 10 C.F.R. § 2.311(c). Any such appeal must be filed within 25 days of the service of this memorandum and order.³¹ 10 C.F.R. § 2.311(b).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE
/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE
/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 21, 2012

³¹ The time allotted for filing an appeal was changed from ten days to 25 days on August 3, 2012. 77 Fed. Reg. at 46,572–73, 46,592.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN CALIFORNIA EDISON, CO.)
)
(San Onofre Nuclear Generating Station -) Docket Nos. 50-361-LA and 50-362-LA
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denial of Petition to Intervene and Request for Hearing)** have been served upon the following persons by the Electronic Information Exchange.

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San Onofre Nuclear Generating Station, Units 2 and 3, Docket Nos. 50-361-LA and 50-362-LA
ORDER (Denial of Petition to Intervene and Request for Hearing)

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[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of December 2012